

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL CLARK,

Plaintiff,

vs

Case No: 13-10251
Honorable Victoria A. Roberts

LISA GOMEZ,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On June 7, 2013 Magistrate Judge Binder issued a Report and Recommendation ("R&R") (Doc. 41) recommending that the MDOC Defendants' motion to revoke *in forma pauperis* status (Doc. 16) be granted because Plaintiff had three strikes against him under 28 U.S.C. § 1915(g) when he filed this lawsuit, and he failed to allege that he was under imminent danger of serious physical injury at the time he filed; this allegation would have allowed him to file *in forma pauperis*, despite his three strikes.

Mr. Clark objects to the recommendation (Doc. 44). He does not deny his three strikes. Nor does he deny his failure to allege the threat of physical injury. Plaintiff only says that he was prevented from filing when he was under threat of physical injury at the Saginaw Correctional Facility at the hands of these Defendants because they refused to give him the supplies he needed to file suit. He says it was not until he was transferred to a different facility -- and no longer under threat -- that he was able to file his suit.

Plaintiff's objection is without merit. The mandate of 28 U.S.C. § 1915 is clear:

In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g)

If a prisoner's "complaint clearly satisfie[s] the provision of § 1915 (g) at the moment of filing, the district court ha[s] no authority to consider the merits of the complaint." *Mitchell v Tennessee*, 86 Fed. App'x 898, 899 (6th Cir. 2004). *See also Peebles v Bradshaw*, 110 Fed. App'x 590 (6th Cir. 2004) (same); *Wallace v Franklin*, 66 Fed. App'x 546, 547 (6th cir. 2003)(same).

The Court **ADOPTS** the Magistrate Judge's R&R and **GRANTS** Defendants' motion; Clark's *in forma pauperis* status is **REVOKED**. The MDOC must immediately stop taking any IFP payments out of plaintiff's account.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: August 22, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on August 22, 2013.

S/Linda Vertriest
Deputy Clerk